No. 00-923

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IN THE

Supreme Court of the United States

WILLIAM M. McGUFFAGE, *et al.*,

Petitioners,

v.

CLINTON A. KRISLOV and JOAN SULLIVAN,
individually and on behalf of all others similarly situated,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below correctly found, following *Buckley v. Constitutional Law Foundation, Inc., et al.*, 525 U.S. 182 (1999) and other authority, that Illinois Election Code Section 7-10's[1] disqualification of all signatures on candidate nominating petitions circulated by persons other than registered voters of the political division for which the candidate seeks nomination violates the First and Fourteenth Amendments to the United States Constitution.

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1. 10 ILCS 5/7-10

REASONS FOR DENYING THE WRIT

The Court should deny the writ because the Court already held in *Buckley v. American Constitutional Law Foundation, Inc., et al.*, 525 U.S. 182 (1999) that a state's requirement that a petition circulator be a registered voter violates the First and Fourteenth Amendments to the United States Constitution. Thus, contrary to Petitioners' writ, no question of substantial public importance exists upon which this Court has not already ruled.

The heart of Petitioners' writ argues that *Buckley* is distinguishable from the case *sub judice* because the statute found unconstitutional in *Buckley* required ballot initiative petition circulators to be registered voters, whereas the statute at issue in this case (Section 7-10 of the Illinois Election Code; 10 ILCS 5/7-10) requires candidate nominating petition circulators to be registered voters, and thus the lower courts erred in following *Buckley*. Petitioners are wrong.

In *Buckley*, the opinion of the Court, the concurrence and dissent of Justices O'Connor and Breyer, and the dissent of Chief Justice Rehnquist, all recognized that voter registration restrictions on ballot initiative petition circulators were similar to voter registration restrictions on candidate nominating petition circulators. According to the majority opinion, "[i]nitiative-petition circulators, the Tenth Circuit recognized, resemble handbill distributors in that both seek to promote public support for a particular issue of position . . . Initiative-petition circulators also resemble candidate-petition signature gatherers, however, for both seek ballot access." *Buckley*, 525 U.S. at 190. The concurrence and dissent of Justices O'Connor and Breyer stated that "Colorado's registration requirement parallels the requirements in place in at least 19 states and the District of Columbia that candidate petition circulators be electors . . ." *Id.* at 218 (O'Connor, J., and Breyer, J., concurring and dissenting). Consequently, the dissent of Chief Justice Rehnquist stated that:

> [t]he Court today invalidates a number of state laws designed to prevent fraud in the circulation of candidate

> petitions . . . [it] squarely holds that a State may not limit circulators to registered voters . . . at least 19 states plus the District of Columbia explicitly require that candidate petition circulators be electors, and at least one other State requires that its petition circulators be state residents. Today's decision appears to place each of these laws in serious constitutional jeopardy.[2]

Buckley, 525 U.S. at 226-232 (Rehnquist, C.J., dissenting).

Courts following *Buckley* have similarly found that its holding invalidates laws requiring candidate nominating petition circulators to be registered voters, and have thus rejected arguments attempting to distinguish ballot initiative petitions from candidate nominating petitions. The Seventh Circuit's opinion in this case rightly rejected any such distinction:

> [defendant] argues that *Buckley* and *Meyer* are distinguishable, as they involved ballot access petitions for initiatives and not candidates. This is not a particularly relevant distinction, however. To the extent it is relevant, it suggests that the burden on the candidates is even greater than that placed on those who circulate petitions for ballot initiatives. For the ballot initiative proponent will generally seek support for the one narrow issue presented in the initiative, while the typical candidate embodies a broad range of political opinions, and thus those who solicit signatures on their behalf must speak to a broader range of political topics. *See Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 629, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996) (Kennedy, J., concurring and dissenting) (people often give effect to their views by selecting and supporting candidates who reflect those views);

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2. Chief Justice Rehnquist specifically cited the Illinois statute challenged in this action as likely unconstitutional under the majority's opinion. *See Buckley*, 525 U.S. at 232 n.3.

> *Lubin v. Panish*, 415 U.S. 709, 716, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974) (voters assert their preferences through candidates). Indeed, the Supreme Court has recognized that the primary election process often has the effect of determining a political party's position on a variety of significant issues. *California Democratic Party*, 120 S.Ct. at 2408. Thus, it is appropriate to say that "democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." Id. By precluding a class of people from soliciting signatures on behalf of a particular candidate, the Illinois law has the potential to squelch a greater quantity and broader range of political speech than laws which only restrict initiative proponents. So this distinction provides no support for the Board's position, and certainly doesn't convince us that the Illinois law doesn't burden the candidates' rights.

Krislov, et al. v. Rednour, et al., 226 F.3d 851, 861-2 (7th Cir. 2000).

The Second Circuit in *Lerman, et al. v. Board of Elections in the City of New York, et al.*, 232 F.3d 135 (2d Cir. 2000) similarly held that a New York State statute requiring candidate nominating petition circulators to be registered voters was unconstitutional under the First and Fourteenth Amendments to the United States Constitution. Defendants in that case attempted to distinguish *Buckley* in the same manner that Petitioners do in this case, arguing alleged differences between candidate nominating petition circulators and ballot initiative petition circulators. The Second Circuit, following *Buckley* and *Krislov*, rejected such an illusory distinction, holding that "there is no basis to conclude that petition circulators on behalf of a candidate involves any less interactive political speech than petition circulation on behalf of a proposed ballot initiative —

the nature of the regulated activity is identical in each instance." *Lerman*, 232 F.3d at 148. *See also Nader 2000 Primary Committee, Inc., et al. v. Hechler*, 112 F. Supp. 2d 575, 579 (S.D. W. Va. 2000) (granting a preliminary injunction because "Buckley strongly suggests the West Virginia statute's resident registered voter requirement for [candidate] petition circulators is presumptively unconstitutional"); *Molinari, et al. v. Powers, et al.*, 82 F. Supp. 2d 57, 76 (E.D.N.Y. 2000) (finding unconstitutional under *Buckley* a New York State law that required candidate nominating petition circulators to be residents of the applicable political subdivision because "[t]he restriction on the candidate petition signature gatherers here erodes the same First Amendment interests as the initiative petition signature gatherers' restrictions in Buckley and Meyer"); *Young, et al. v. Illinois State Board of Elections, et al.*, 116 F. Supp. 2d 977, 985 (N.D. Ill. 2000) (relying on *Buckley* and *Krislov* in holding that section 10-4 of the Illinois Election Code, requiring candidate nominating petition circulators to be registered voters, is unconstitutional under the First and Fourteenth Amendments to the United States Constitution); *Tobin for Governor, et al. v. Illinois State Board of Elections, et al.*, 105 F. Supp. 2d 882 (N.D. Ill. 2000) (relying on *Buckley* and *Krislov* in holding that section 10-4 of the Illinois Election Code, requiring candidate nominating petition circulators to be registered voters, is unconstitutional under the First and Fourteenth Amendments to the United States Constitution); *Nader 2000 Primary Committee, Inc., et al. v. Hazeltine, et al.*, 226 F.3d 979, 980 n.2 (8th Cir. 2000) (stating, in dictum, that under *Buckley* South Dakota's repealed requirement that only registered voters may circulate candidate nominating petitions was likely unconstitutional under the First and Fourteenth Amendments to the United States Constitution).

As the above cited cases correctly found, the requirement that candidate nominating petition circulators be registered voters erodes the same First and Fourteenth Amendment interests as the requirement in *Buckley* that ballot initiative

petition circulators be registered voters. Because petition circulators commonly urge support of voters — in one case for the initiative and in the other for the candidate — any significant reduction in the number of petition circulators reduces the amount of voices who will convey the message; it also reduces the chances that those supporting the candidates will gather signatures sufficient to qualify for the ballot and thus eliminates the consequent debate on the candidates and issues that elections resolve. *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989). In fact, this Court has recognized that ballot initiatives and elections for public office are the only two means by which "voters can assert their preferences," and laws that operate to restrict ballot access restrict the right to vote. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Thus, contrary to Petitioners' position, it is clear that the factual situation in *Buckley* (voter registration requirement for ballot initiative petition circulators) is similar to the instant action (voter registration requirement for candidate nominating petition circulators), and therefore the legal analysis applied in *Buckley* is equally applicable to this case, along with a finding that Section 7-10 of the Illinois Election Code places an unconstitutionally severe burden upon Respondents.

In light of this Court's clear ruling in *Buckley* that voter registration requirements for candidate nominating petition circulators stand in the same legal light as voter registration requirements for ballot initiative petition circulators, and are therefore unconstitutional under the First and Fourteenth Amendments to the United States Constitution, this case is not one that requires the exercise of the Court's extraordinary and discretionary jurisdiction. The Seventh Circuit in this case correctly and fairly affirmed the district court.

CONCLUSION

Wherefore, Respondents respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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